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RL:0444

HB 2051-82 RELATING TO THE ENVIRONMENT

Statement for
House Committee on
Energy, Ecology and Environmental Protection
Public Hearing - 19 February 1982

By
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HB 2051-82 proposes very significant amendments of HRS Chapter 341 relating to the Office of Environmental Quality Control and sweeping amendments of HRS Chapter 343, relating to the Environmental Impact Statement System and the Environmental Quality Commission. This statement on the bill has been reviewed in draft by the Legislative Subcommittee of the University of Hawaii Environmental Center. However it does not reflect an institutional position of the University.

Proposed Amendments of HRS 341

Two changes in HRS 341 are proposed, both in Subsection 3a. The first relates to the amendments proposed in HRS 343 and will be considered in this review in connection with the latter. The second would transfer the Office of Environmental Quality Control (OEQC) from the Department of Health (DOH) to the Department of Budget and Finance (B&F).

The OEQC was originally placed in the Office of the Governor where it might exercise most effectively its functions of interdepartmental coordination and advising the Governor. It was transferred to the DOH for administrative purposes in accordance with a 1980 law intended to distribute among the several departments a number of agencies that had accumulated in the Office of the Governor. In the DOH, the OEQC has languished. It does not at present have a director, and it has lost staff. In the opinion of the Department of Health, the placement of the OEQC in the Department should be for more than just administrative purposes. However, unless the independence and capabilities of the OEQC are restored, it might as well be abolished. The problem is one we have addressed in several papers, most recently a general review of the status of the OEQC (RG:0046) and comments on proposed changes in its status (RL:0442).

Part of the problem of the placement of the OEQC in the DOH is that the Department has strong and legitimate environmental concerns of its own, but no overall environmental management responsibilities and hence not necessarily a balanced overall environmental management philosophy. The OEQC is somewhat constrained by departmental policy even by its present placement in the DOH, and it would be totally constrained if the DOH had its way. The same constraint would probably not develop with placement of the OEQC in B&F because B&F has no significant direct environmental concerns of its own. Although nothing in the general mission of B&F would suggest positively that the OEQC would be appropriately placed in that department, it might well be a much more satisfactory administrative home for the OEQC than the DOH.

Amendments of HRS 343

The amendments proposed in HB 2051 to HRS 343, which relates to the Environmental Impact Statement (EIS) system, are best discussed as they constitute:

1. An interagency transfer of EIS-system administrative authority;
2. Centralization of EIS-system powers in the system administrative authority;
3. Housekeeping changes; and
4. Editorial changes.

With one possible exception, no changes in the coverage of the EIS system are proposed.

1. Interagency transfer of EIS-system administrative authority

At present the state Environmental Impact Statement (EIS) System is administered by the Environmental Quality Commission (EQC), a body especially created for this purpose. Under HB 2051, the administrative responsibility would be transferred to the OEQC, and the EQC would be abolished.

Two issues are associated with the proposed transfer:

- a) an increased concentration of power; and
- b) a change in the nature of the body administering the EIS system.

Placement of the responsibility to administer the EIS system, when it was established, in the already existing OEQC was proposed in several bills. In the version of the bill that became law, the Legislature deliberately called for the creation of a new body, the EQC, in order to avoid adding the powers of the EIS system to those already held by the OEQC.

Now that the EIS system has been in existence and relatively stable for several years, there may be less objection to the concentration of power in the OEQC.

The EQC and OEQC are very different kinds of bodies. The EQC is a commission whose unpaid members are appointed by the Governor from the public in accordance with certain specifications intended to assure a breadth of interest. Associated with it is only a very small staff. The OEQC is an agency headed by a director appointed by

the governor and provided with a considerably larger staff than that of the EQC. In relation to the difference in character of the two bodies, three sorts of EIS-system functions are usefully distinguished:

- a) Purely operational functions relating to the EIS system,
- b) General EIS-system policy determination,
- c) Determinations related to specific actions covered by the EIS system.

The purely operational functions could surely be performed just as well or better by the OEQC than by the EQC. It is primarily the placement of the responsibilities for general policy determination and for specific determinations that is of concern. The question is whether these responsibilities are most appropriately exercised by an agency (and effectively, in problem cases, by the director of that agency) or by a commission.

In considering this question the existence of a third body should be recalled. This is the Environmental Council, which is composed, like the EQC, of unpaid members appointed by the governor from the public, in accordance with specifications to assure breadth of interest, and which was established at the same time as the OEQC to advise that body. The Council is at present a purely advisory body, whereas the Commission (EQC) is an executive body, but the Council is as capable of representing public views as the Commission. The combination of the Council's advisory responsibilities and the EQC's determinative powers in a single body representing the public is surely worthy of consideration, although the combination would alter the nature and increase the duties of either of the present bodies.

Determinations relating to specific actions covered by the EIS systems are judgemental in nature and hence at least as much policy as operational in nature. At present, the burden of responsibility for specific determinations is not so great that it could not be born by the possible combination of the Council and the Commission. However, HB 2051 proposes a very great increase in the specific determinative responsibilities of the body administering the EIS system. If this increase were to occur it would be quite impractical for any body of unpaid members appointed from the public to bear the burden.

A final consideration in connection with the proposed transfer of administrative authority should surely be the public confusion regarding distinctions among the present three bodies with similar names: the Office of Environmental Quality Control, the Environmental Quality Commission, and the Environmental Council. Reduction in number would surely result in reduction of confusion.

2. Centralization of EIS-system powers in the system-administrative authority

Several specific EIS-system responsibilities would be transferred, under HB 2051, from other authorities to the EIS-system-administering authority. The overall responsibilities and power of the EIS-system administering authority would be very greatly increased with the proposed centralization of power, whether that authority is the EQC as at present or the OEQC. The major responsibilities whose centralization is proposed are:

- a) The responsibility to determine whether or not EIS's should be prepared for specific projects, a responsibility now resting in the case of public projects with the proposing agencies, and in the case of private projects with the agencies whose permissions are necessary; and

- b) The responsibility to determine whether or not EIS's are acceptable, a responsibility now resting in the case of public projects with the Governor or a Mayor, and in the case of private projects with the permitting agencies.

So many determinations of these kinds must be made that it would be quite infeasible for the EQC to make them, even if it were to meet as often as twice a month and had an expanded staff. The load is, indeed, so great that, to handle it, the OEQC would have to be provided with a considerably larger staff than is now authorized.

More important than the feasibility question is the issue of centralization of responsibilities. If there is still resistance to placing, in the OEQC, even the general responsibility to operate the EIS system, there will surely be much greater resistance to transferring to that agency the responsibility of general EIS-policy determination and specific determinations.

An unrelated transfer of power to the EIS-system administering authority is represented in the proposal to allow the authority to delineate the Waikiki-Diamond Head area, within which proposed actions are subject to the EIS system, in place of defining that area as in a specified development plan. This is the only change proposed that might imply a change in the coverage of the EIS system. Its purpose is obscure.

3. Housekeeping changes

Certain housekeeping changes to the present provisions of HRS 343 would be required for consistency with the major amendments discussed above. These include:

- a) The deletion of a provision, in the present HRS 343-6 (a), relating to appeals to the EQC of EIS-nonacceptance determinations.
- b) The substitution, in HRS 343-7 (b), of the agency proposing an action, for the EQC, as a possible aggrieved party in a suit concerning a determination whether an EIS is or is not necessary.
- c) The deletion in HRS 343-7(c) of the EQC as a possible aggrieved party in a suit concerning an EIS acceptance decision.

The deletions are appropriate in all three cases because, under the bill, it is the OEQC that would be making the determinations.

4. Editorial changes

In addition to the changes discussed above there are several editorial changes on which we have no comment.

However we wish to call attention to an editorial or typographical error of some consequence in the bill. The first 3 lines of page 6 seem to represent language proposed to be added to HRS 343-3, and if so should be underscored.

Other Provisions

In addition to the amendments to HRS 341 and HRS 343 discussed above, HB 2051 contains several sections providing appropriately for details of the proposed transfer of authority from the EQC to the OEQC and for the proposed transfer of OEQC from DOH to B&F.